

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Aug 04, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

KEVIN PATRICK McLEAN,

Defendant.

No. 2:21-CR-0024-WFN-1

STIPULATED PROTECTIVE ORDER
REGARDING COMPUTER
FORENSIC REVIEW PROCEDURES
FOR CHILD PORNOGRAPHY
CONTRABAND

Pending before the Court is the parties' Stipulated Motion for a Protective Order regarding Computer Forensic Review Procedures. ECF No. 101. The Court has reviewed the file and the Motion and is fully informed. Accordingly,

IT IS ORDERED that:

1. For good cause shown, the parties' Stipulated Motion for a Protective Order regarding Computer Forensic Review Procedures, filed August 3, 2023, **ECF No. 101**, is **GRANTED**.

2. 18 U.S.C. § 3509(m) applies to this case, and the Court is required to deny defense requests to copy, photograph, duplicate, or otherwise reproduce material constituting child pornography if the government makes the material reasonably available to Defendant and provides an ample opportunity for the defense to examine it at a government facility. *See* 18 U.S.C. § 3509(m).

3. In order to comply with 18 U.S.C. § 3509(m), and to allow Defendant the greatest opportunity to prepare an effective defense in preparation for trial in this matter, the government will make a true forensic extraction and/or image of devices and media containing alleged child pornography contraband at issue in the above-referenced case. The government will make that forensic extraction and/or image reasonably available to

1 Defendant and provide ample opportunity for the defense team to examine it at a government
2 facility in Spokane, Washington. The parties may readdress the Court if there is a need for
3 additional or after-hours access during the course of litigation in the event trial or motion
4 hearings require additional forensic review.

5 4. The defense forensic examination will be conducted in an interview room
6 monitored by closed-circuit television (“CC-TV”), without audio feed. While the TV with
7 non-audio feed will ensure the integrity of FBI/HSI space and security of its occupants, the
8 video feed is not of sufficient detail or at an angle that would reveal defense strategy. The
9 government and its agents expressly agree that no attempt will be made to record any audio
10 from the workstation and that no attempt will be made to observe the defense team’s work
11 product or computer monitor screen at any time. The defense expert may review the feed to
12 ensure that defense strategy is not being compromised at any time while conducting the
13 forensic review.

14 5. The defense team¹ shall not make, nor permit to be made, any copies of the alleged
15 child pornography contraband pursuant to this Protective Order and shall not remove any
16 contraband images from the government facility. The defense expert will be allowed to copy
17 any file that is not contraband and compile a report (without contraband images/videos)
18 documenting the examination on removable media at the discretion of the defense expert.

19 6. The designated defense expert will leave at the government facility any
20 equipment, including hard drives, which contain child pornography contraband that is
21 identified during forensic evaluation. The parties may readdress this matter with the Court
22 upon notice that the defense intends to retain a different defense expert.

23 7. For the purpose of trial, the government agrees to make available a digital copy
24 of any government trial exhibit that contains contraband, which will be kept in the custody
25

26 ¹ For purposes of this Protective Order, the term “defense team” refers solely to Defendant’s
27 counsel of record, Sandy D. Baggett (“defense counsel”), Defendant’s designated expert(s)
28 (“defense expert”), and a defense investigator.

1 and control of the case agent. Upon reasonable notice by the defense, the case agent will
2 also maintain for trial digital copies of any proposed defense exhibit that contains
3 contraband. If the defense team intends to offer, publish, or otherwise utilize any
4 government or defense exhibit contained on the digital copy maintained by the case agent
5 during trial, the case agent shall assist the defense team in publishing or utilizing the exhibit
6 that contains contraband upon notification by the defense team.

7 The District Court Executive is directed to file this Order and provide copies to
8 counsel.

9 **DATED** this 4th day of August, 2023.

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12 WM. FREMMING NIELSEN
13 SENIOR UNITED STATES DISTRICT JUDGE

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